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**United States Department of Energy
Office of Hearings and Appeals**

In the matter of Personnel Security Hearing)

Filing Date: May 29, 2013)

Case No.: PSH-13-0068)

_____)

Issued: August 30, 2013

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the DOE should not restore the individual’s access authorization at this time.²

I. BACKGROUND

The individual is an employee of a DOE contractor and holds a suspended access authorization. A Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on October 16, 2013, Exhibit 18, in order to address issues raised by an August 23, 2012, credit report. *See* Exhibit 19. The LSO subsequently determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. The LSO informed the individual of this determination in an April 13, 2013, letter that set forth the DOE’s security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Hearing Officer in this case. On July 10, 2013, the LSO issued an Amended Notification Letter (hereinafter referred to as “the Notification Letter”) to the individual, including additional information raising security concerns. The DOE introduced 59 exhibits into the record of this proceeding, and called one witness to testify. The individual introduced 18 exhibits, and presented the testimony of three witnesses in addition to his own testimony.

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a hearing officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether restoring the individual’s security clearance would not endanger the common defense and be clearly consistent with the national interest. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L). Exhibit 1.³ To support this criterion, the LSO cited, among other things, the individual’s failure to satisfy debts, the largest of which was the mortgage on his home, and his failure to provide information requested by the LSO related to his finances. *Id.*

The information cited by the LSO, which is discussed in more detail below, adequately justifies the DOE’s invocation of Criterion L, and raises significant security concerns. The failure or inability to

³ Criterion L defines as derogatory information that an individual has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 708.8(l).

live within one's means, satisfy debts, and meet financial obligations, may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) [hereinafter *Adjudicative Guidelines*] at ¶ 18. Further, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* In addition, any failure to cooperate with the security clearance process can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *Id.* at ¶ 15; *see also* Tr. at 180 (statement by attorney for individual that “certainly what he did, I think, raises a security concern”).

IV. FINDINGS OF FACT AND ANALYSIS

On August 4, 2011, the LSO sent a Letter of Interrogatory (LOI) to the individual, inquiring as to two delinquencies appearing on a July 2011 credit report, Exhibit 23, one for payment of a loan used to purchase a boat in October 2010 (\$336 past due), and \$4,080 past due on payment of the mortgage on his primary residence, a house he had constructed in 2007. Exhibit 22; Hearing Transcript (Tr.) at 75-78. In responding to the LOI, the individual stated that it was his “intention to bring the accounts to a current status. A request will be sent on 08-13-11 requesting that a hardship withdrawal be made to my 401k for funds adequate to satisfy this delinquency.” Exhibit 22 at 2.

However, an August 23, 2012, credit report on the individual revealed that he was by then \$21,909 past due in payment on his mortgage, as well as past due on three other accounts in lesser amounts (\$251, \$341, and \$240). Exhibit 19. During his October 16, 2012, PSI, the individual signed a “Certification to Furnish Information/Documentation,” by which he agreed to provide, no later than December 17, 2012, information regarding the four accounts appearing on the August 2012 credit report as past due. *See* Exhibit 18 at 8-11, 15-18.

In February 2013, not having received the requested information from the individual, an LSO Personnel Security Specialist contacted the individual to remind him of the need to provide the information. Tr. at 39, 88. On February 20, 2013, the individual provided two documents to the LSO, pertaining to the status of two of the smaller delinquencies. These documents were correspondence from creditors, both dated February 19, 2013, advising the individual as to how much he would need to pay to satisfy the relevant outstanding debts. Exhibit 14. One of the documents referenced a settlement agreement pertaining to one of the debts and indicated that the current balance on the account was \$0.05. *Id.*

On March 11, 2013, the Manager of the LSO received a letter from the individual expressing “concern over the sudden action of the termination of my Q access authorization.” Exhibit 12. Attached to the letter were copies of the two documents provided to the LSO on February 20, a statement showing that the third smaller debt had been satisfied, and an undated request form for a hardship withdrawal from the individual’s 401(k) and retirement plan. *Id.* Also attached was a letter from the holder of the individual’s mortgage, stating that the “Total Arrearage Amount Due as of February 22, 2013” was \$34,035.63. *Id.*

The individual, on March 20, 2013, sent an email to the Program Manager of DOE’s Administrative Review Program, asking for consideration of certain “mitigating factors,” including the “housing

market crashing,” having “family serve as the contractor” that built his home, “kidney complications I have experienced,” the cost of gaining full custody of his children after a divorce, and his wife’s failure to pay child support. Exhibit 10. On April 2, 2013, the individual sent an email to the LSO Manager and the Personnel Security Specialist expressing, among other things, his opinion that “an Administrative Review is unwarranted, and will be a waste of the government’s time, money, and resources.” Exhibit 4.

In his hearing testimony, the individual was asked whether the factors listed in his March 20 email were the reasons for his problems. He responded that they were “[i]n part, but not entirely. My reason was essentially I became selfish and spent money on things that I should not have.” Tr. at 100. He acknowledged that despite his divorce, which took place in 2005, his “financial situation was in good shape” until well after that, noting that he did not become delinquent on his mortgage until April of 2011. *Id.* at 101. He testified that, in 2010, after selling a mobile home that he was making payments on and paying off a car loan, his “finances were adequate” to allow him to purchase a boat costing over \$18,000, by taking out a loan with monthly payments of \$343. *Id.* at 77, 102. However, the individual failed to make his monthly home mortgage payments beginning in April 2011, and made no payments until \$42,988.86 was paid to the mortgage holder on June 26, 2013, bringing his mortgage current. Tr. at 80, 91; Exhibit F.

What appears to have triggered the very recent action that addressed the individual’s by-far most significant and most delinquent debt is the awareness of his mother, sister, and wife (married to the individual the previous month) that a judgment of foreclosure had been entered against the individual and a sale of his home ordered on June 6, 2013. Exhibit 8; Tr. at 119. The individual’s mother testified that she learned about the foreclosure when her husband’s cousin brought to her attention a notice published in the local newspaper on Friday, June 14, 2013. Tr. at 131-32.

Over the ensuing weekend, the individual’s family, all of whom live in adjoining properties, discussed what actions would be needed to prevent the forced sale of the individual’s home. *Id.* at 134-36, 137-38; 142-44, 149. Ultimately, the \$42,988.86 payment came from funds obtained through money from the individual’s 401(k) account, together with a gift of \$12,760 from the individual’s parents. *Id.* at 146-47.

A. The Concerns Raised by the Individual’s Handling of Finances Have Not Been Resolved

The *Adjudicative Guidelines* list the following conditions that could mitigate the security concerns in the present case raised under Guideline F:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

Adjudicative Guidelines at ¶ 20.

The individual is indeed fortunate to have a family that quickly acted to help him out of his financial crisis and one that had the means to do so. The individual's sister, who testified at the hearing, is a former financial analyst whose assistance appears to have been essential to helping stop the foreclosure process against the individual's home. Tr. at 142, 144-48. Both she and the individual's mother testified credibly to their determination to counsel and help the individual in the future as needed. *Id.* at 139; 149-50; 156-57. The individual's wife, whom he married in May 2013, testified that she "will be after him. I am after him. Had I known about the foreclosure, it would have been . . . fully followed through relentlessly. No doubt." *Id.* at 126.

These circumstances have made it possible for the individual to resolve his outstanding debts, Exhibits B through E, G, H, and certainly reduce the likelihood of a recurrence of the individual's failure to meet his financial obligations in a timely manner. However, in prior cases involving financial considerations, Hearing Officers have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *See, e.g., Personnel Security Hearing, Case No. PSH-13-0046 (2013); Personnel Security Hearing, Case No. TSO-1078 (2011); Personnel Security Hearing, Case No. TSO-0878 (2010).*

Here, the individual has yet to demonstrate, let alone sustain, any pattern of financial responsibility. Not only was the pattern of non-payment of the individual's mortgage only very recently ended, it ended only after the intervention of his family, and not because the individual took the initiative to seek their help, but rather only after the family learned from a third party, on June 14, 2013, about the foreclosure on the individual's home. This is particularly troubling given that, by this time, the individual's clearance had been suspended and the administrative review process commenced, which should have made painfully clear to the individual the consequences of inaction.

Moreover, a sustained pattern of responsible behavior by the individual is needed not only to demonstrate that a recurrence of financial irresponsibility is unlikely, but also to resolve legitimate concerns regarding the individual's judgment and reliability generally, qualities essential in clearance holders at all times and beyond the handling of finances alone. As such, given the degree and recency of poor judgment and reliability shown by the individual in this case, I cannot find at this time that he has resolved the concerns raised by his past financial irresponsibility.

B. The Concerns Raised by the Individual's Personal Conduct Have Not Been Resolved

The personal conduct of the individual raising the most serious security concerns is his "failure to cooperate with the security clearance process." *Adjudicative Guidelines* at ¶ 20.⁴ As noted above,

⁴The Notification Letter also cited the individual's "disregard for rules and regulations by establishing a pattern of violating work procedures: . . ." Exhibit 1. However, at the hearing in this matter, the DOE Counsel stated that the LSO would not be proceeding with the most recent violations cited, alleged to have occurred in 2012 and 2011, Tr. at

the individual signed a “Certification to Furnish Information/Documentation” during his October 16, 2012, PSI, by which he agreed to provide, no later than December 17, 2012, information regarding the four accounts appearing on the August 2012 credit report as past due. *See* Exhibit 18 at 8-11, 15-18. In his testimony, the individual claimed that in late November 2012 he called the Personnel Security Specialist who interviewed him and left a voice mail requesting an extension of time to provide the information. Tr. at 85. The Personnel Security Specialist, however, testified at the hearing that, after the PSI, she did not hear from the individual before attempting to contact him in February 2013 regarding the information requested. *Id.* at 39.

Considering the discrepancy between these two accounts, the lack of corroboration of the individual’s claim, and the self-serving nature of his testimony, I do not find evidence sufficient to support a finding that the individual did, in fact, attempt to get an extension of time to provide the information the LSO requested. Even if he had done so, the individual acknowledged in his testimony that he “did not follow up to ensure that [the Personnel Security Specialist] had received the message and I did not receive a phone call back.” *Id.* at 85. The individual further admitted that it was “entirely” his responsibility to confirm whether he could be granted an extension, and that he “did not take the issue with as much seriousness as I should have. I realized it was serious, but the extent of what has happened, no, I did not.” *Id.* at 86.

The seriousness of this failure by the individual is underlined by the fact that, as noted in the testimony of the Personnel Security Specialist, Tr. at 38, when an individual fails to cooperate by furnishing information pertinent to his eligibility for access authorization, the Part 710 regulations authorize the DOE to terminate an individual’s access authorization, without affording him an opportunity for an administrative review hearing. 10 C.F.R. § 710.6(a)(1); *see also Adjudicative Guidelines* at ¶ 15 (failure to cooperate with security processing “will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility”).

In view of the seriousness of the conduct of the individual in this case, I find that the concerns it raises regarding his judgment and reliability can be mitigated only by a sustained period of behavior demonstrating good judgment and reliability. Given the recency of the conduct here, the individual clearly has not established such a pattern. Indeed, particularly given the correspondence the individual sent to DOE officials after the suspension of his clearance, discussed above, not until the hearing in this matter has the individual given any indication that he fully understands the concerns raised by his failure to cooperate. 10 C.F.R. § 710.7(c) (requiring consideration of, among other things, the nature, seriousness, and recency of the individual’s conduct). I therefore cannot find at this time that the individual has resolved the serious concerns raised by his failure to cooperate with the security clearance process.

18-19, leaving for consideration only one alleged violation taking place in 2000. With respect to this event, the record contains portions of an Office of Personnel Management (OPM) Report of Investigation closed on October 14, 2002, indicating that the individual was terminated from a position as a deputy sheriff in August 2000. Exhibit 50 at 17-18 (closed October 14, 2002). The OPM report cited a termination letter stating, among other things, that the individual “violated policy by consuming alcohol while armed. He violated laws by allowing a minor to have and consume alcohol while he and his minor cousins were in route to an adult night club. The letter states that his actions could be considered as contributing to the delinquency of a minor.” *Id.* at 18. I find that any concern raised by this incident has been sufficiently mitigated by the passage of over 13 years since the event, the lack of a pattern of similar violations by the individual, and the relatively young age of the individual (22) at the time of the events in question. *See Adjudicative Guidelines* at ¶ 17(c).

V. CONCLUSION

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns at issue. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: August 30, 2013